

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.779 OF 2005

IN

SUIT NO.679 of 1973

State of Maharashtra. ..Plaintiff.

V/s.

Godrej & Boyce Mfg. co. Ltd.
& Ors. ..Defendants.

And

Jimmy Naval Tata. ..Respondents.

Mr.P.G.Lad, AGP for Applicants.

Ms.Geeta Shashtri AGP for SLA0 in LAR No.88/88 & 20/88.

Ms.S.M.Dandekar AGP for SLAO in LAR No.31/78 & 23/88.

Mrs.S.Shreedharan, AGP for SLA0 in LAR 27/88.

Mr.Mehta i/b Payne & Co. for defendant No.1, 19,20 and 21.

Mr.R.R.Ravel, for defendant No.9,12,15,17 and 18.

CORAM: A.M.KHANWILKAR, J

DATE : AUGUST 10, 2005.

P.C. :

1. Heard counsel for the parties.
2. This application is for bringing on record names of new trustees of the trust who has named as defendant in the suit, on account of death of the

original trustees. This application is opposed by defendant No. 1, 19, 20 and 21 on the argument that the application is barred by limitation. It is contended that fact of death of original trustees was brought to the notice of the plaintiffs counsel as back as in 1998 and even thereafter, present application is filed only on 21st June, 2005. As it is an application in the pending suit, the same will be governed by Article 137 of the Limitation Act, where under Limitation provided is three years from the date of accrual of the right to take out such application. This submission is countered by the counsel for the plaintiffs relying on the Judgment reported in **AIR 1979 Bombay 109, Sitabai Ramchandra Jaltare & Ors. V/s. Masjid Nurun Mohalla Jingerwadi**. It is submitted on behalf of the plaintiff that the application is not under Order 22 Rule 4. In the circumstances, question of limitation does not arise, as no consequence for delay in filing such application is provided in law. I find substance in the submission canvassed on behalf of the plaintiff that question of limitation is not attracted in the fact situation of the present case which position is fortified from the exposition in the above said Judgment, especially in the paragraph No.8 thereof. Recent decision is of Division Bench

of this court and I am bound by the same. Division Bench has relied on the decision of the Full Bench of Patna High Court in **AIR 1962 Patna 285(Full Bench)** as well as **Nagpur High court, AIR 44 Nagpur 137** to support this position. I see no reason to depart from the legal position stated in the reported decisions.

3. To get over this position, counsel for the contesting defendant would contend that the decision pressed into service on behalf of the plaintiff can be distinguished. According to him, in that decisions, this court was not called upon to consider the application of general provisions of Limitation Act. The argument seems to be attractive but clearly overlooks the observations in paragraph-8 of the decision which has noted that in respect of application under Order 22 Rule 10, no limitation is prescribed before presentation of application and no penalty is laid down for failure to substitute the person on whom the interest of the deceased plaintiff or defendant has devolved and hence the right to make an application under the said rule is a right which accrues from day to day and can be made at any time during pendency of a suit and there is no abatement under that rule. Viewed in this perspective, there

is no substance in the objection taken on behalf of the contesting defendant. Accordingly, this application deserves to be allowed. Same is therefore, made absolute in terms of prayer clause (a), with no order as to costs.

4. It is brought to my notice that there is mistake in the names mentioned in the cause title in respect of defendant No.19 and respondent No.2. Correct names are furnished in the letter forwarded by the counsel for the said defendants to the Government Pleader. In other words, the amendment be carried out consistent with the names furnished by the defendant No. 19 and respondent No.2 as the case may be, Amendment to be carried out within four weeks from today.